

1 James J. Sienicki - 009294
2 Ronald W. Messerly - 020582
3 **SNELL & WILMER L.L.P.**
4 400 E. Van Buren
5 One Arizona Center
6 Phoenix, AZ 85004-2202
7 Telephone: (602) 382-6351
8 jsienicki@swlaw.com
9 rmesserly@swlaw.com
10 *Attorneys for Intervenor American Council of
11 Engineering Companies of Arizona*

12 Keith F. Overholt - 007473
13 Michael J. Farrell - 015056
14 **JENNINGS, STROUSS & SALMON, P.L.C.**
15 A Professional Limited Liability Company
16 The Collier Center, 11th Floor
17 201 East Washington Street
18 Phoenix, Arizona 85004-2385
19 Telephone: (602) 262-5911
20 koverholt@jsslaw.com
21 mfarrell@jsslaw.com
22 *Attorneys for Intervenor Associated General
23 Contractors of America, Arizona Chapter*

14 **IN THE UNITED STATES DISTRICT COURT**

15 **FOR THE DISTRICT OF ARIZONA**

16 MIRIAM FLORES, individually and as
17 parent of Miriam Flores, a minor child,
18 et al.,

19 No. CIV 92-596-TUC-RCC

20 **MOTIONS TO INTERVENE AND
21 ALTERNATIVE MOTION TO FILE
22 BRIEF *AMICUS CURIAE***

23 Plaintiffs,

24 vs.

25 STATE OF ARIZONA, et al.,

26 Defendant.

27 AMERICAN COUNCIL OF
28 ENGINEERING COMPANIES OF
29 ARIZONA; and
30 ASSOCIATED GENERAL
31 CONTRACTORS OF AMERICA,
32 ARIZONA CHAPTER,

33 Intervenors.

1 **I. MOTION FOR INTERVENTION OF RIGHT.**

2 Pursuant to Rule 24(a), Fed. R. Civ. Proc., American Council of Engineering
3 Companies of Arizona (“ACEC”) and Associated General Contractors of America,
4 Arizona Chapter (“AGC”), apply to this court to be admitted as Intervenor-Defendants for
5 the narrow and limited purpose of opposing the specific relief sought by Plaintiffs’
6 Motion for Sanctions [doc. 296 (Plaintiffs’ Motion)], namely Plaintiffs’ request that this
7 Court enjoin Defendant State of Arizona (the “State”) from receiving federal highway
8 funds. ACEC and AGC (collectively, “Intervenors”) are member organizations whose
9 members perform contracts with the State that are funded by the federal monies which
10 Plaintiffs’ seek to have restrained. The interests of their members are directly affected
11 and those interests would be directly impaired if the relief sought by Plaintiffs were
12 granted. Moreover, because of the impact and effect of restraining such funds would have
13 on Intervenors’ members is unique as to any current party to the case, Intervenors’
14 interests are not otherwise adequately represented in the matter.

15 **II. ALTERNATIVE MOTION FOR PERMISSIVE INTERVENTION.**

16 In the alternative, Rule 24(b), Fed. R. Civ. Proc., Intervenors apply to this court to
17 be admitted as Intervenor-Defendants for the narrow and limited purpose of opposing the
18 specific relief sought by Plaintiffs’ Motion for Sanctions [doc. 296], namely Plaintiffs’
19 request that this Court enjoin the State from receiving federal highway funds.
20 Intervenors’ claims and defenses have common questions of law with the issues presented
21 in Plaintiffs motion.

22 **III. ALTERNATIVE MOTION FOR LEAVE TO FILE A BRIEF *AMICUS***
23 ***CURIAE***

24 In the alternative to both motions to intervene stated above, ACEC and AGC seek
25 leave of the Court to file a brief *amicus curiae* addressing both the propriety and the
26

1 power of this Court to grant the specific relief sought by Plaintiffs' Motion for Sanctions
2 [doc 296], namely Plaintiffs' request that this Court enjoin the State from receiving
3 federal highway funds.

4 These motions are supported by the accompanying Memorandum In Support of
5 Motions to Intervene and Alternative Motion to File Brief *Amicus Curiae* and the records
6 and files of this Court. In addition, in accordance with Rule 24(c), Fed. R. Civ. Proc.,
7 Intervenors have filed the accompanying Memorandum in Support of Motions to
8 Intervene and Alternative Motion to File a Brief *Amicus Curiae*.

9
10 RESPECTFULLY SUBMITTED this 18th day of August, 2005.

11 SNELL & WILMER L.L.P.

12 By: /s/ Ronald W. Messerly
13 James J. Sienicki
14 Ronald W. Messerly
15 400 E. Van Buren
16 One Arizona Center
17 Phoenix, AZ 85004-2202
18 *Attorneys for Intervenor American Council of*
19 *Engineering Companies of Arizona*

20 - and -

21 JENNINGS, STROUSS & SALMON, P.L.C.

22 By: /s/ Michael J. Farrell
23 Keith F. Overholt
24 Michael J. Farrell
25 The Collier Center, 11th Floor
26 201 East Washington Street
Phoenix, Arizona 85004-2385
Attorneys for Intervenor Associated General
Contractors of America, Arizona Chapter

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2005, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Timothy M. Hogan - thogan@aclpi.org
Joy Herr-Cardillo - jherrcardillo@aclpi.org

I hereby certify that on August 18, 2005, I served the attached document by mail on the following, who are not registered participants of the CM/ECF System:

Jose A. Cardenas, Esq.
Lynne C. Adams, Esq.
Lewis and Roca LLP
40 N. Central, Ste. 1900
Phoenix, AZ 85004-4429

Susan Segal, Esq.
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007-2997

/s/ Stacy Palmer
Stacy Palmer